

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 711 of 1986

with

Civil Revision Application No.1334 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VASHRAM KANJI

Versus

VRAJLAL KANJI DODIA

Appearance:

MR JAYANT PATEL for Petitioner

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/04/2000

ORAL JUDGEMENT

#. Both these Revision Applications were ordered to be

heard together by the order passed at the time of admitting these Revision Applications. Accordingly these CRAs are taken up for final hearing and disposed of by this common judgment.

#. So far as CRA No.711 of 1986 is concerned, the same has been filed by the original plaintiff of Regular Suit No. 59 of 1980. Present petitioner-plaintiff had filed the said suit in the Court of Small Causes at Rajkot (Old No. 365 of 1977). Aforesaid suit was filed by the plaintiff for a permanent injunction on the ground that the respondent-defendant is the owner of the suit property. He (plaintiff) has been given the premises on rent as described in para 1 of the plaint at the rate of Rs. 20/- per month. It is the case of the plaintiff that the premises in question is a block and from his premises he can go to his terrace through the ladder which is situated on the abutting portion of plaintiff's block. According to the plaintiff he is the tenant of the entire block which also includes the terrace. He is using the same since 22-23 years and except the plaintiff nobody else has the right to use the aforesaid terrace. According to him there is no other way for approaching the terrace except the ladder which the plaintiff is using for going to the terrace. However according to him the defendant is trying to enter the area and damage some portion in the plaintiff's possession of the said terrace illegally. Therefore, the present petitioner-plaintiff who is the tenant of the suit premises filed a suit against the defendant for declaration and injunction restraining the defendant from making any damage or destructing any part of the premises which the plaintiff is occupying and also restraining the defendant from obstructing the right of the plaintiff in any manner as a tenant.

#. The aforesaid suit was resisted by the defendant on various grounds. It was contended that the plaintiff was not occupying the suit terrace portion as contended and that since he has no right or interest in the terrace portion, the suit was required to be dismissed.

#. So far as the original landlord of the suit premises i.e. present respondent Vrajlal Kanji Dodia is concerned, he has filed CRA No.1334 of 1986. He is the original plaintiff of Regular Civil Suit No.856 of 1979. Aforesaid suit was filed by the said landlord on the ground that he is the owner of the suit premises and that the tenant has not paid the rent regularly and that he was in arrears of rent from 1.4.1977. It is also his case that the defendant is causing nuisance and

annoyance. He has served a demand notice as required under section 12(2) of the Bombay Rent Act demanding the arrears of rent. Since the defendant did not comply with the same, ultimately a suit for possession was filed on the ground of arrears of rent as well as on other grounds.

#. Since the common property was the subject matter of both the suites, both the suits were consolidated and heard together. The Trial Court came to the conclusion that there is no substance in the say of the plaintiff of civil suit no.54 of 1980 (original tenant) who is the petitioner in CRA No.711 of 1986. It was found that as per the rent note only a block was given to the tenant and therefore, he has failed to establish that any tenancy right was given over the terrace in question. So far as the suit of original landlord i.e. civil suit no.856 of 1979 is concerned it was found that the tenant was not in arrears of rent and that he was ready and willing to pay the rent. Accordingly the Trial Court dismissed the civil suit no.59 of 1980 which was filed by the original tenant for declaration and injunction. The suit for possession filed by the landlord bearing civil suit no. 856 of 1979 was also dismissed. The Trial Court passed a decree for Rs. 540/in favour of the landlord for the amount of rent and standard rent was fixed at the rate of Rs. 20/- p.m.

#. The tenant and landlord both preferred the appeal before the District Court. Civil Appeal No. 91 of 1982 was filed by the tenant Vrajlal Kanji Dodia who is the petitioner in CRA No.771 of 1986 and Civil Appeal No. 97 of 1982 was filed by the original landlord who is the petitioner in CRA No.1334 of 1986. Both the aforesaid appeals were also heard together and by a common judgment the Appellate Court dismissed both the appeals and confirmed the decree of the Trial Court passed in each of the suits.

#. Against the aforesaid judgment of the Appellate Court these two Revision Applications have been filed and as stated earlier CRA No.711 of 1986 is filed by the tenant-original plaintiff of Regular Civil Suit No. 59 of 1980. CRA No. 1334 of 1986 is filed by the original landlord plaintiff of Regular Civil Suit No.856 of 1979. Along with the aforesaid two suits in the Trial Court, application for standard rent was also filed by the tenant being Civil Application No. 432 of 1979 which was also disposed of with the suit and standard rent was also fixed at Rs.20/- p.m.

#. So far as the first Revision Application No. 711 of 1986 is concerned, it is the contention of the petitioner-tenant that he was using the said terrace since 20-22 years . The landlord has no right to obstruct by making any construction in the said terrace. The question which requires consideration therefore, is whether the terrace portion is included in the demised premises or whether the Appellate Court committed any error in coming to the conclusion that it is not a part of the rented premises. The Appellate Court has relied upon the extract of the municipal register maintained by the Rajkot Municipal Corporation at exh.69 wherein the suit premises is described, the name of the tenant is shown as giving rent of Rs.20/p.m. As per the description of the property it is shown that he has been given one room, kitchen and Osari and one office room. It is found in para 28 of the judgment by the Appellate Court that there is no mention about the terrace portion in the aforesaid extracts exh. 59 to 63 and that even rent note exh.37 shows that one block was given to the tenant on rent. There is absolutely no mention about the terrace portion which is situated over the aforesaid block. Therefore, by appreciating the aforesaid documentary evidence, the courts below have come to the conclusion that it cannot be said that terrace portion was rented out to the tenant. The tenant had led some oral evidence. It was found that in view of the documentary evidence on record, no reliance can be placed on the oral evidence. Therefore, on appreciating the documentary evidence on record both the courts below have come to the conclusion that the terrace portion was not rented out to the tenant. It cannot be said that there was any error of law which can be said to have been committed by the courts below in coming to that conclusion. In my opinion no other view is possible than the one taken by the Courts below. I therefore, do not find any merit in CRA No.711 of 1986 and therefore, the same is required to be dismissed.

#. It is however argued by Mr. Jayant Patel learned advocate for the petitioner in that looking to the topography of the rented premises it is inevitable to conclude that the tenant was given exclusive premises including the terrace on lease. He has submitted that the stair case for going to the terrace is situated in the internal part of the rented premises and therefore in order to reach to the terrace one has to come to the rented premises itself and from the rented premises one can reach to the terrace premises. He has therefore, argued that looking to the topography of the construction it can be presumed that the terrace is a part and parcel

of the rented premises. According to him even if the landlord wants to go to the terrace he has to first come to the rented premises from inside as the stair case is situated inside the rented premises. He further submitted that the plaintiff-landlord who is occupying the adjoining premises wants to come from his own terrace to the rented premises by removing the portion of the wall of the terrace of the rented premises of the present petitioner and therefore, he submitted that aforesaid topography of the premises would clearly show that the tenant was given the entire premises which includes the terrace. However, it may be true that the tenant might be using the aforesaid terrace since long. But the question would be whether the terrace portion can be said to be part of the leased property or not. The reasoning given by the Appellate Court cannot be said to be in any way perverse as he has given detailed reasoning and the judgment of the Appellate Court is based on documentary evidence on record. It therefore, cannot be said that the finding is in any manner perverse or contrary to law which requires interference of this court in this Revision Application. Even otherwise the landlord being the owner of the property is not prevented from going to the terrace portion even from the rented premises.

##.. Now so far as CRA No. 1334 of 1986 is concerned the same is filed by the landlord against the dismissal of his suit being Civil Suit No.856 of 1979 for getting a decree for possession on the ground of arrears of rent and dismissing his appeal being Regular Civil Appeal No.97 of 1982. So far as the question of arrears of rent is concerned it has been found by the courts below that in response to the suit notice the tenant had paid the entire rent and that he was ready and willing to pay the rent and therefore he was protected under section 12(1) of the Bombay Rent Act. There is a documentary evidence on record to substantiate the same. There are MO coupons on record. The evidence on record is at exh.43 to 53 . The landlord was not accepting the said amount. Detailed reasoning is given by the Appellate Court in para 45 of his judgment in this behalf. The nature of payment is also shown in the same. It is found that even payment of entire amount of Rs. 400/- was sent to the landlord by MO, the coupon of which is at exh.50 and therefore, when in response to the suit notice if the entire amount of rent is paid , there was no cause of action for the landlord to file a suit for arrears of rent. Accordingly I do not find any substance in the Revision Application No. 1336 of 1986 filed by the landlord. The same is also dismissed accordingly. Thus both the Civil Revision

Applications are dismissed. Interim relief granted earlier stands vacated. No order as to costs.

##. Mr. Patel lastly requested that the interim relief granted earlier may be continued for a period of 3 months to enable his clients to approach the Honourable Supreme Court. In the facts and circumstances of the case, the interim relief granted earlier in Civil Revision Application No.. 711 of 1986 shall be continued till 15.7.2000.

(P.B.Majmudar.J)

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